

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Marquita B. Fuller,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1283 C.D. 2012
	:	
Respondent	:	Submitted: December 7, 2012

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE COVEY

FILED: January 2, 2013

Marquita B. Fuller (Claimant) petitions this Court, pro se, for review of the Unemployment Compensation Board of Review's (UCBR) May 30, 2012 order affirming the Referee's decision denying her unemployment compensation (UC) benefits under Section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> Claimant essentially presents one issue for this Court's review: whether the UCBR erred in concluding Claimant was ineligible for benefits under Section 402(e) of the Law. We affirm.

Claimant was hired as a part-time Assistant Group Supervisor with the YMCA of Philadelphia & Vicinity (Employer) beginning May 25, 2010. Employer's employment policy prohibits employees from spanking, slapping, or hitting children, and a single incident in violation of said policy may be grounds for immediate

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<sup>1</sup> Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e).

discharge. Claimant acknowledged that she was aware of said policy. On January 26, 2012, while Claimant was changing a toddler, the child became fussy and hit Claimant. Claimant hit the toddler back. Claimant and the child went back and forth a few times, during which Claimant slapped the child on the buttocks three or four times. The incident was reported to Employer's Director of Family Services, Lynne Saunders, and Employer's Executive Director on January 26, 2012. On January 27, 2012, Employer discharged Claimant for hitting a child.

Claimant subsequently applied for UC benefits. On March 7, 2012, the Philadelphia UC Service Center mailed its determination denying Claimant UC benefits. Claimant appealed, and a hearing was held before a Referee. On March 26, 2012, the Referee affirmed the UC Service Center's determination. Claimant appealed to the UCBR. On May 30, 2012, the UCBR affirmed the Referee's decision. Claimant appealed to this Court.<sup>2</sup>

Claimant argues that the UCBR erred in concluding Claimant was ineligible for benefits under Section 402(e) of the Law. Specifically, Claimant contends she did not violate a work rule because she did not spank the child. We disagree.

“In an unemployment compensation case, the UCBR is the ultimate fact finder and is empowered to make credibility determinations. Questions of credibility and the resolution of evidentiary conflicts are within the discretion of the UCBR and are not subject to re-evaluation on judicial review.” *Bell v. Unemployment Comp. Bd. of Review*, 921 A.2d 23, 26 n.4 (Pa. Cmwlth. 2007) (citation omitted). Here, the Referee specifically found that Employer's witnesses testified credibly, and Claimant's testimony was not persuasive. The UCBR adopted and incorporated the

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<sup>2</sup> This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

Referee's findings and conclusions. As the UCBR accepted Employer's testimony and rejected Claimant's testimony, this Court is bound by those determinations.

Moreover, "[s]ubstantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *City of Pittsburgh, Dep't of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted).

Section 402(e) of the Law provides that an employee is ineligible for unemployment compensation benefits when his unemployment is due to discharge from work for willful misconduct connected to his work. The employer bears the burden of proving willful misconduct in an unemployment compensation case. Willful misconduct has been defined as (1) an act of wanton or willful disregard of the employer's interest; (2) a deliberate violation of the employer's rules; (3) a disregard of standards of behavior which the employer has a right to expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or a disregard of the employee's duties and obligations to the employer.

*Dep't of Transp. v. Unemployment Comp. Bd. of Review*, 755 A.2d 744, 747-748 n.4 (Pa. Cmwlth. 2000) (citation omitted). "In the case of a work rule violation, the employer must establish the existence of the rule, the reasonableness of the rule and its violation." *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 (Pa. Cmwlth. 2001).

Here, Ms. Saunders testified that all employees receive a copy of the personnel policy which they must sign on their first day of work. The policy states that "employees shall not abuse children including physical strikes, spank, shake or slap, verbally humiliate, degrade or threaten." Original Record (O.R.) Item 9 at 9. Kelly Walsh, Employer's Toddler Supervisor, testified that on January 26, 2012 she "had witnessed [Claimant] changing a child on the changing table and he was upset about it and crying and had hit her first on the arm, and then she immediately hit him

back saying, you don't hit [Claimant], and they went back at it three or four times.” O.R. Item 9 at 7. When asked how many times Claimant hit the child, Ms. Saunders replied: “He would hit her, and then she hit him on the arm about four times I'd say.” *Id.* Clearly the record contains relevant evidence adequate to support the conclusions that Employer has a reasonable policy against hitting children, Claimant was aware of said policy, and Claimant violated the policy. Accordingly, the UCBR did not err in concluding that Claimant committed willful misconduct.

For all of the above reasons, the UCBR's order is affirmed.

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ANNE E. COVEY, Judge

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ORDER

AND NOW, this 2<sup>nd</sup> day of January, 2013, the Unemployment Compensation Board of Review's May 30, 2012 order is affirmed.

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ANNE E. COVEY, Judge